SUPREME COURT OF THE UNITED STATES.

No. 193.—October Term, 1927.

Bountiful Brick Company and United States Fidelity and Guaranty Company, Plaintiffs in error, vs. Elizabeth W. Giles, as Widow and as Guardian, etc., and the Industrial Commission of Utah.	In Error to the Supreme Court of the State of Utah.

[February 20, 1928.]

Mr. Justice Sutherland delivered the opinion of the Court.

The question for determination is whether the Utah Workmen's Compensation Act (Comp. Laws, Utah, 1917, § 3133, and subsequent amendments), which provides compensation for personal injury or death of an employee by accident "arising out of or in the course of his employment," as it was construed and applied to the facts by the court below, contravenes the due process of law clause of the Fourteenth Amendment.

It is difficult to make a satisfactory statement of the facts from the evidence because of the absence from the record of a plat of the premises which was used before the state industrial commission and referred to by the witnesses, particular places, position of railway tracks, etc., being pointed out by references to the plat. But considering the testimony in connection with the findings of the industrial commission and of the court below, the following is a fair summary:

On June 17, 1925, Nephi Giles, an employee of the brick company, while crossing the tracks of the Bamberger Electric Railroad Company on his way to work, was struck by a train and killed. The yard of the brick company is on the west side of the railway tracks immediately adjacent thereto, and connected therewith, as the commission found, by a spur. The railroad tracks run north and south. Giles resided—and the evidence indicates that the

employees generally resided—easterly from the railway tracks. In going from their homes to the brickyard, it was impossible to avoid crossing the railway tracks. There was a public crossing, called the Burns road, about 200 yards south of the brickyard. The right of way of the railway company opposite the yard was fenced on both sides. Giles, as well as other employees, in going to work, sometimes followed the Burns road to the railway crossing, and then went north along the railway tracks to the northeast corner of the brickyard and thence through a gap in the fence to the north entrance of the yard; and sometimes employees, including Giles, entered the right of way through the east fence at other points north of the Burns road, and thence crossed the tracks more or less directly to the gap. This varied practice was well known to the company and carried on without objection on its part. It was possible to reach the brickyard by following the Burns road across the railway tracks and for a distance west, and thence northerly and easterly to the west entrance of the yard, but this way was long, circuitous and inconvenient, and, so far as the evidence shows, not used. A deep open ditch lying north of the road prevented access to the south end of the brickyard.

The manager of the company testified that he knew of the many ways by which the employees crossed the tracks; that he had seen Giles coming in all ways; that he cautioned Giles a number of times to be careful, but did not instruct him or any of the employees to discontinue these methods of crossing.

On the occasion of the accident which resulted in his death, Giles entered the Bamberger right of way through the wire fence on the east side at a point nearly opposite the gap in the west fence. He was struck while proceeding across the tracks to this point of exit.

From these facts the industrial commission found the company liable and made an award accordingly, which the court below affirmed. 67 Utah —.

Whether Giles was negligent in entering through the fence where he did, or in crossing the tracks, or in not selecting the safest way, are matters not relevant to the inquiry. Liability was constitutionally imposed under the Utah compensation law if there was a causal connection between the injury and the employment in which Giles was then engaged substantially contributing to the injury. *Cudahy Co.* v. *Parramore*, 263 U. S. 418, 423-425. And

nployment includes not only the actual doing of the work, but a asonable margin of time and space necessary to be used in pass- g to and from the place where the work is to be done. If the nployee be injured while passing, with the express or implied con- nt of the employer, to or from his work by a way over the em- oyer's premises, or over those of another in such proximity and lation as to be in practical effect a part of the employer's prem- s, the injury is one arising out of and in the course of the em- oyment as much as though it had happened while the employee as engaged in his work at the place of its performance. In other ords, the employment may begin in point of time before the work entered upon and in point of space before the place where the ork is to be done is reached. Probably, as a general rule, em- oyment may be said to begin when the employee reaches the ntrance to the employer's premises where the work is to be done; t it is clear that in some cases the rule extends to include ad- cent premises used by the employee as a means of ingress and ress with the express or implied consent of the employer. *Id.*, 426. And see generally, *Procaccino* v. *Horton & Sons*, 95 Conn. 8; *Merlino* v. *Connecticut Quarries Co.*, 93 Conn. 57; *Corvi* v. *iles & Reynolds Brick Co.*, 103 Conn. 449; *Starr Piano Co.* v. *dustrial Acc. Com.*, 181 Cal. 433, 436-438; *Sundine's Case*, 218 ass. 1, 4.

In the *Parramore* case the same Utah statute was under con- deration, and we held that it was valid as applied to the case of employee who, while on his way to work, was killed by a loco- otive at a public crossing on a railroad adjacent to his employer's ctory. There, as here, it was necessary for the employees, in der to get to the place of work, to cross the tracks, and they were effect invited by the employer to do so. The difference between e two cases is that in the former the crossing customarily used as entirely upon a public road, while here the way followed was part along the railway tracks and by crossings within the rail- ad right of way wherever the employees upon their own volition ight choose to go.

The present case, though it comes nearer the border line, lls within the principle of the *Parramore* case. Since the only ay of access to its brickyard from the east was across the rail- ay tracks, the company necessarily contemplated the crossing

of them by its employees. No definite line of travel being indicated by the company or followed by the employees, who, with the company's full knowledge and acquiescence, habitually crossed wherever they saw fit, it results that, however the crossing was made, the risk thereby incurred was reasonably incidental to the employment and became annexed as an implied term thereof. If it were necessary to strengthen the implication of consent on the part of the company to the crossing by any way its employees chose to take, it would be enough to refer to the testimony of the manager, who, knowing of the practice, did not forbid it, but in effect approved it by warning Giles simply to be careful.

It is said that Giles was a trespasser upon the railroad right of way; but if that be established by the evidence, the answer is that, if the company, not being the owner, could under any circumstances defend upon that ground (*Daltry* v. *Electric Light Co.*, 208 Pa. 403, 411-412), it cannot avail itself of the defense here because it consented to the trespass.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.